IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11739 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHUPAT DEVABHAI BORICHA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR PRAVIN GONDALIYA for Petitioner

MR H.H. PATEL, ASSTT. GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/02/2001

ORAL JUDGEMENT

The grievance made by the learned Counsel for the respondent is that the paper book which was sent to the respondent with the notice of this Court is not

containing all the papers. This grievance made at this stage cannot be accepted, as there may be all possibility of tampering with the record. The presumption unless contrary is proved is that the paper book which was sent with the notice of this Court contained all the papers. What it is contended by the learned Counsel for the respondent would have been true, then the first step of the respondent would have been to report this matter to the Court. Unfortunately this has not been done till this day. In these facts, this is nothing but a concocted and manufactured ground raised by the learned Counsel for the respondent, on instructions of the officer present in the Court from the Department.

Manifold contentions are raised by the learned Counsel for the petitioner challenging the order dated 12th Sept. 2000 of the Police Commissioner, Rajkot city, under which the petitioner was ordered to be detained as a dangerous person, but as this petition deserves acceptance only on one ground, each contention needs not be referred to, considered and decided.

In paragraph No. (A), the petitioner averred that the order of detention is contrary to law, proved facts and material on record and therefore, the same deserves to be quashed and set aside and further the detaining authority is not justified in ordering the detention of detenu on the ground that his detention is absolutely necessary with a view to prevent him from acting in a manner prejudicial to the maintenance of public order and therefore the order of detention is required to be quashed and set aside.

The petitioner averred in paragraph No.(F) that the petitioner made a representation dated 9.10.2000 to the respondent No.1 through the jail authority but the said representation has not considered by the authorities and if it is concerned then there is delay in considering thereof. If at all representation of the petitioner is considered then decision is not communicated to the petitioner and if communicated then there is delay in communication also. From the representation of the petitioner dated 9th October, 2000, which is at page No.29 of this petition, I find that the petitioner demanded the statement of witnesses namely - Hamitaben Chauhan, Gomtiben Vaghela, Babubhai Ravjibhai Mayani, recorded in Criminal complaint No. 420/2000. From this document I further find that the petitioner demanded the statement of witnesses namely Hasubhai Sidibhai Bhatti, Gulab Shah Fakir, Yusufbhai Jamalbhai Juneja recorded in Criminal Complaint No. 137/2000. The petitioner made a

categorical statement that as per demand made for the supply of copies of statement of these witnesses, the same were not given to him by the respondent. This petition was admitted on 20th Nov. 2000. None of the respondents is cared to file reply to the Special Civil Application. Non-filing of reply to this Special Civil Application is a serious matter, more so where it pertains to detention. This act of the respondents not to file reply to the Special Civil Application in the detention matter amounts to connivance of the officer with detenu which deserves to be depricated. Not only this there from it may also be reasonably inferred that there is all the possibility of extending the helping hand by the respondent to the detenu so that there may not remain any hurdle in the way of the petitioner to get his detention order quashed and set aside. This is the position in this Court, but if we go by the facts of this case, it appears that at the stage of the passing of the detention order also all endeavour appears to have been made by the officers to leave out serious lacunas in the order, so that the detenu may get rid of this detention order through the Court. Learned Counsel for the respondent admits that in such matters technical pleas are permissible to be raised and on those pleas the detention order are being quashed by this Court in many cases. I fail to see any justification in the approach of the detaining authority not to be careful in the matter and further not to take all precautions so that as far as possible no lacunae whatsoever is left out in the order. This law is not recent one. This Detention Act is of 1985. Thousands of decisions would have been given by this Court, by other High Courts as well as by the Hon'ble Supreme Court in the detention matters but if still the same lacunae persists in the order, then only inference that may reasonably follow is that it is a deliberate act on the part of the detaining authority. After perusing the record which is available with the Counsel for the respondent, of the matter of the Department concerned, it is contended that the detaining authority has replied to the petitioner that whatever documents relied upon for passing the order against the petitioner have been given to him. So far as FSL report is concerned, he contended that on the day on which the order is made it was not available. There is no reason to doubt on the correctness of this statement of facts made re: FSL report. Where it was not available, the detaining authority is justified not to give copies of the same to the petitioner. However, so far as other documents are concerned, even if it is taken that the same were not the part of the record which was placed for consideration of the detaining authority to record his

subjective satisfaction to pass the order of detention of the petitioner as dangerous person, these documents are certainly vital and relevant documents to the matter and petitioner has all the justification and in fact a right to make a demand for the same. When demand has been made, then those documents are to be supplied to him. It is not the case of the respondent that the statements of those witnesses were not recorded in the two criminal complaint Nos. 137/2000 and 420/2000. Non-supply of these vital and relevant documents results in the deprival of valuable right of making effective representation guaranteed to the petitioner detenu under the Constitution. As a result of the aforesaid discussion, this petition succeeds and same is allowed. The order of detention of the petitioner dated 12th Sept. 2000 is quashed and set aside. The petitioner Bhupat Devabhai Boricha, the detenu, at present in Jamnagar District jail, Jamnagar be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent-State is directed to pay costs of the petition to the petitioner.

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